

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

JOSEPH NEWMAN,	)	Cause No. CV 07-39-GF-SEH-RKS
	)	
Plaintiff,	)	
	)	
vs.	)	FINDINGS AND RECOMMENDATION
	)	OF U.S. MAGISTRATE JUDGE
SCOTT FOSTER and MIKE REDPATH,	)	
	)	
Defendants.	)	
_____	)	

On March 23, 2007, Plaintiff Joseph Newman moved to proceed in forma pauperis with this action alleging civil rights violations under 42 U.S.C. § 1983. Plaintiff is a state prisoner proceeding pro se. The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

On June 4, 2007, the Court issued two orders, one granting Plaintiff's motion to proceed in forma pauperis and one requiring the Administrator of the Montana State Prison to collect the filing fee from his prison trust account. On July 18, 2007, Plaintiff's service copies of those Orders were returned. Mail sent to Plaintiff under Cause No. CV 07-43-H-DWM-RKS was also returned.

D. Mont. L.R. 5.4(a) requires parties proceeding pro se to "promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address." Plaintiff failed to comply, despite being advised of the need to report a change of address. See Notice of Case Opening (doc. 3) at 1.

D. Mont. L.R. 5.4(b) provides:

The Court may dismiss a complaint without prejudice or strike an answer when:  
(1) mail directed to the attorney or pro se party by the Court has been returned to the Court as not deliverable; and  
(2) the Court fails to receive within 60 days of this return a written communication from the attorney or pro se party indicating a current address.

Because Plaintiff has not been in contact with the Court since at least July 16, 2007, and because mail addressed to him at his last known address of record has been returned as undeliverable, the Court recommends that his Complaint in this case be dismissed under D. Mont. L.R. 5.4.

Based on the foregoing, the Court enters the following:

#### **RECOMMENDATION**

1. Plaintiff's Complaint (doc. 1) should be DISMISSED for failure to comply with D. Mont. L.R. 5.4.

2. Pursuant to Fed. R. App. P. 24(a)(4)(B), the District Court should CERTIFY that any appeal from its disposition would be taken in bad faith because Plaintiff failed to advise the Court of a change in his mailing address despite explicit warning about the need to do so.

#### **NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), Plaintiff may serve and file written objections to this Findings and Recommendations within ten (10) business days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept,

reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

Plaintiff must immediately inform the Court of any change in his mailing address. Failure to do so may result in dismissal of this case without notice to him.

DATED this 26<sup>th</sup> day of September, 2007.

/s/ Keith Strong  
Keith Strong  
United States Magistrate Judge